



1 parole after his second parole consideration hearing. Petitioner challenged the  
 2 Board's decision by filing habeas petitions in the state courts. The California  
 3 Supreme Court denied the petition on December 23, 2008. Petitioner filed the  
 4 instant federal petition on January 13, 2009.

## 5 6 DISCUSSION

### 7 A. Standard of Review

8 This Court may entertain a petition for writ of habeas corpus "in behalf of a  
 9 person in custody pursuant to the judgment of a state court only on the ground that  
 10 he is in custody in violation of the Constitution or laws or treaties of the United  
 11 States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

12 A district court shall "award the writ or issue an order directing the  
 13 respondent to show cause why the writ should not be granted, unless it appears from  
 14 the application that the applicant or person detained is not entitled thereto." 28  
 15 U.S.C. § 2243.

### 16 B. Petitioner's Claims

17 Petitioner seeks federal habeas corpus relief from the Board's June 10, 2006  
 18 decision finding petitioner unsuitable for parole on the grounds that 1) the denial  
 19 violates petitioner's right to due process, and 2) it violates the terms of his plea  
 20 agreement. Liberally construed, petitioner's claims appear cognizable under § 2254  
 21 and merit an answer from respondent.

## 22 23 CONCLUSION

24 For the foregoing reasons and for good cause shown,

25 1. Petitioner's motion for leave to proceed in forma pauperis (Docket No.  
 26 7) is DENIED as moot since petitioner has paid the filing fee. (See Docket No. 4.)

27 2. The clerk shall serve by certified mail a copy of this order and the  
 28 petition and all attachments thereto on respondent and respondent's attorney, the

1 Attorney General of the State of California. The clerk also shall serve a copy of this  
2 order on petitioner.

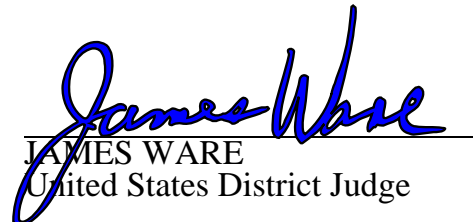
3 3. Respondent shall file with the court and serve on petitioner, within  
4 **ninety (90) days** of the issuance of this order, an answer conforming in all respects  
5 to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of  
6 habeas corpus should not be issued. Respondent shall file with the answer and serve  
7 on petitioner a copy of all portions of the state trial record that have been transcribed  
8 previously and that are relevant to a determination of the issues presented by the  
9 petition.

10 If petitioner wishes to respond to the answer, he shall do so by filing a  
11 traverse with the court and serving it on respondent within **thirty (30) days** of his  
12 receipt of the answer.

13 4. Respondent may file a motion to dismiss on procedural grounds in lieu  
14 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
15 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall  
16 file with the court and serve on respondent an opposition or statement of non-  
17 opposition within **thirty (30) days** of receipt of the motion, and respondent shall file  
18 with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of  
19 any opposition.

20 5. Petitioner is reminded that all communications with the court must be  
21 served on respondent by mailing a true copy of the document to respondent's  
22 counsel. Petitioner must also keep the court and all parties informed of any change  
23 of address.

24  
25 DATED: May 19, 2009

  
JAMES WARE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JOSE GILBERTO HERNANDEZ,

Petitioner,

v.

D K SISTO, Warden,

Respondent.

Case Number: CV09-00165 JW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 5/28/2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jose Gilberto Hernandez J-12875  
California State Prison - Solano  
2100 Peabody Road  
P. O. Box 4000  
Vacaville, Ca 95696-4000

Dated: 5/28/2009

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk